

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)

REC'D 28 JUN 2004



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Applicant's or agent's file reference P/63624/GPTU73	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/GB 03/01372	International filing date (day/month/year) 28.03.2003	Priority date (day/month/year) 28.03.2002
International Patent Classification (IPC) or both national classification and IPC H04L12/56		
Applicant MARCONI UK INTELLECTUAL PROPERTY LTD et al.		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 6 sheets, including this cover sheet.  
  
☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).  
  
 These annexes consist of a total of    sheets.

- This report contains indications relating to the following items:
  - I    ☒ Basis of the opinion
  - II   ☐ Priority
  - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV   ☐ Lack of unity of invention
  - V    ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI   ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application

Date of submission of the demand  20.10.2003	Date of completion of this report  25.06.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Forster, G  Telephone No. +49 89 2399-8986  

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/GB 03/01372**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-26 as originally filed

**Claims, Numbers**

1-8 as originally filed

**Drawings, Sheets**

1/4-4/4 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 8

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 8 are so unclear that no meaningful opinion could be formed (*specify*):

**see separate sheet**

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1
Inventive step (IS)	Yes: Claims	
	No: Claims	2-7
Industrial applicability (IA)	Yes: Claims	1-7
	No: Claims	

2. Citations and explanations

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to section III.

1. Claim 8 does not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined. The claim attempts to define the subject-matter in terms of the result to be achieved which merely amounts to a statement of the underlying problem. Therefore it is not possible to carry out an examination of this claim.

to section V.

1. Reference is made to the following document cited in the international search report.

D1: WO-A-97 14240

2. Since the formulation of claim 1 and therefore the scope for which protection is sought is too broad document D1 (cf. abstract), which is considered to represent the most relevant state of the art, already discloses according to the features of claim 1, an apparatus for providing communications network resource to a plurality of classes of use of the network, a different level of service being associated with each said class of use (cf. page 1, lines 1 to 17; fig. 1), said apparatus comprising a demand estimator for estimating the demand for each of said plurality of classes of use; a dynamic resource allocator for allocating to each class a proportion of said communications network resource, the proportion allocated being dependent on the estimated demand for each class, the allocation optimising use of the available resource whilst at the same time ensuring that the level of service of each class is observed (cf. claim 1 to 4 and 7 to 10); and a communications network element for providing to each class the proportion of network resource allocated to it cf. page 1, line 18 to page 3, line 2).

Therefore claim 1 does not satisfy the criterion set forth in Article 33(2) PCT because its subject-matter is not new in respect of the prior art as defined in the regulations (Rule 64(1)-(3) PCT).

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Furthermore, it should be noted that even if novelty of claim 1 could be argued, based on minor differences between the features of said claim and those disclosed in document D1, the subject-matter of claim 1 would not involve an inventive step, (Rule 65(1)(2) PCT), since the underlying design principle is disclosed in D1 and these minor differences would be considered to be simple design measures lying well within the normal design competence of a person skilled in the art.

3. The additional features of the dependent claims 2 to 7 relate to minor details and are either directly derivable from the above mentioned prior art document or represent simple modifications of the prior art and thus lie within the normal design competence of a skilled person. These claims therefore, either alone or in combination appear to add nothing of inventive significance to claim 1 and thus do not satisfy the criterion set forth in Article 33(3) PCT.

**Remarks concerning formal deficiencies**

1. In order to meet the requirements of Rule 5.1(a)(ii) PCT, the cited document D1 should have been identified in the description and the relevant background art disclosed therein should have been briefly discussed.